



A G E N D A

General Plan/LCP Implementation Committee

January 28, 2009

3:30 p.m.

City Council Chambers

1. Approve Action Minutes from January 14, 2008
Attachment No. 1 3:30-3:35pm
2. Draft Zoning Code Review

A. Alley Setbacks and Encroachments
B. Residential Related Regulations
C. Non-Conforming Structures
D. Public View Protection
Attachment No. 2 3:35-5:45pm
3. Items for Future Agenda 5:45-5:50pm
4. Public Comments on non-agenda items 5:50-6:00pm
5. Adjourn to February 18, 2009, 3:30 p.m.

Attachments:

1. Draft Action Minutes for January 14, 2009
2. Draft Zoning Code Review support material

ATTACHMENT NO. 1

Draft Action Minutes from January 14, 2009



CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTATION COMMITTEE

DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, January 14, 2009**

Members Present:

X	Ed Selich, Mayor, Chairman
E	Leslie Daigle, Council Member
X	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

Advisory Group Members Present:

X	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
X	Brion Jeannette
	Don Krotee
X	Todd Schooler
	Kevin Weeda
	Dennis Wood

Staff Representatives:

X	Sharon Wood, Assistant City Manager
X	David Lepo, Planning Director
X	David Hunt, City Attorney
X	Aaron Harp, City Attorney
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Melinda Whelan, Assistant Planner

E = Excused Absence

Committee Actions

1. **Agenda Item No. 1** – Approval of minutes of December 10, 2008.

Action: Committee approved draft minutes.

Vote: Consensus

2. **Agenda Item No. 2 – Coastal Land Use Plan Amendment: Progress**

Staff member Jim Campbell provided a progress report on responding to the 53 Coastal Commission suggested modifications. There were four outstanding issues between the City Staff and the Coastal Commission that Campbell has been working to resolve, two of which appear to have been resolved. The four issues are prohibition of timeshares in the CV designation, mitigation fees for eliminating lower-cost accommodations or the provision of higher-cost accommodations, mixed-use residential in Mariners Mile, and allowing re-development within Corona Del Mar and Balboa Village. The two issues that appear to be resolved are for the re-development policy for Corona Del Mar and Balboa Village with amended language that will be more flexible and mixed-use residential in Mariners Mile. Coastal Commission staff will accept the possibility for fifty-percent of the properties within this area to be used for mixed-use development with residential only occurring on the second floor.

3. **Agenda Item No. 3 – Draft Zoning Code Review**

- A. **Comment Letter from Mariner's Mile Business Association (Provide comments)**
- B. **Paleontological, Archeological and Historical Resources (Direct staff to include regulations in draft code or to continue to use Council policies citywide)**
- C. **Residential Parking Requirements (Review revised standard and direct staff to make any necessary changes)**
- D. **In-Lieu Parking Section (Review draft code and direct staff to make any necessary changes)**
- E. **Mixed-Use Noise and Tenant Notification (Review and direct staff to make any necessary changes)**

Action: The Committee went through items A. through E. Ned McCune, Chairman of the Mariner's Mile Business Association expressed concern with number three and number nine of the response letter provided by staff. Committee member Hawkin's provided General Plan policies related to the protection of Historical Resources and a letter that provided an example of notifications and protections in connection with residential developments in mixed use areas. After discussion of each item the Committee and Advisory Members discussed and directed staff to:

- try and accommodate MM Business association concern with offices only allowed on second floor, resolution – take a look at use tables and try and accommodate pedestrian oriented offices on the ground floor for mixed-uses, public view protection (number nine) will be brought back at a future scheduled meeting
- re-look at Council Policies K-2 (Places of Historical and Architectural Significance), K-4 (Paleontological Guidelines), K-5

(Archeological Guidelines) and update accordingly to implement General Plan Policies in the Historical Resources Element to provide historical resource protection, resolution – do not codify

- residential parking requirements resolution – 4,000 square feet of habitable area, regardless of lot width, is threshold for requiring a third parking space for new single-family residences
- delete “and maintenance” before “of public parking facilities.” in the first sentence of Subsection 20.30.10 In-lieu Parking Fees
- revise language of Subsection 20.60.130 Mixed-Use Noise and Tenant Notification – include recordation requirement

The public provided a comment regarding 3.E. expressing that the tenant notification resolution is good but noise could be a concern with some of the visitor serving uses, such as restaurants that Coastal Commission encourages in some mixed-use areas.

Vote: Consensus

4. **Agenda Item No. 3** – Items for future agenda

Action: Tentative schedule for January 28th – revised public view protection, non-conforming chapter specifically applicability, residential regulations, alley setbacks with a focus on the second floor encroachment with guidance from the Public Works and General Services Directors;

Vote: None

5. **Agenda Item No. 4** – Public Comments on non-agenda items

The public provided comments requesting the following:

- for the PI district allow marinas and yacht clubs as a permitted use
- for the CM district add marinas as a permitted use with a footnote referencing Title 17
- designate Bayshore Marina (2550 Bayshore Drive) with PI district instead of OS to be consistent with other privately owned marinas in the area

Meeting Adjourned 3:45 p.m.

ATTACHMENT NO. 2

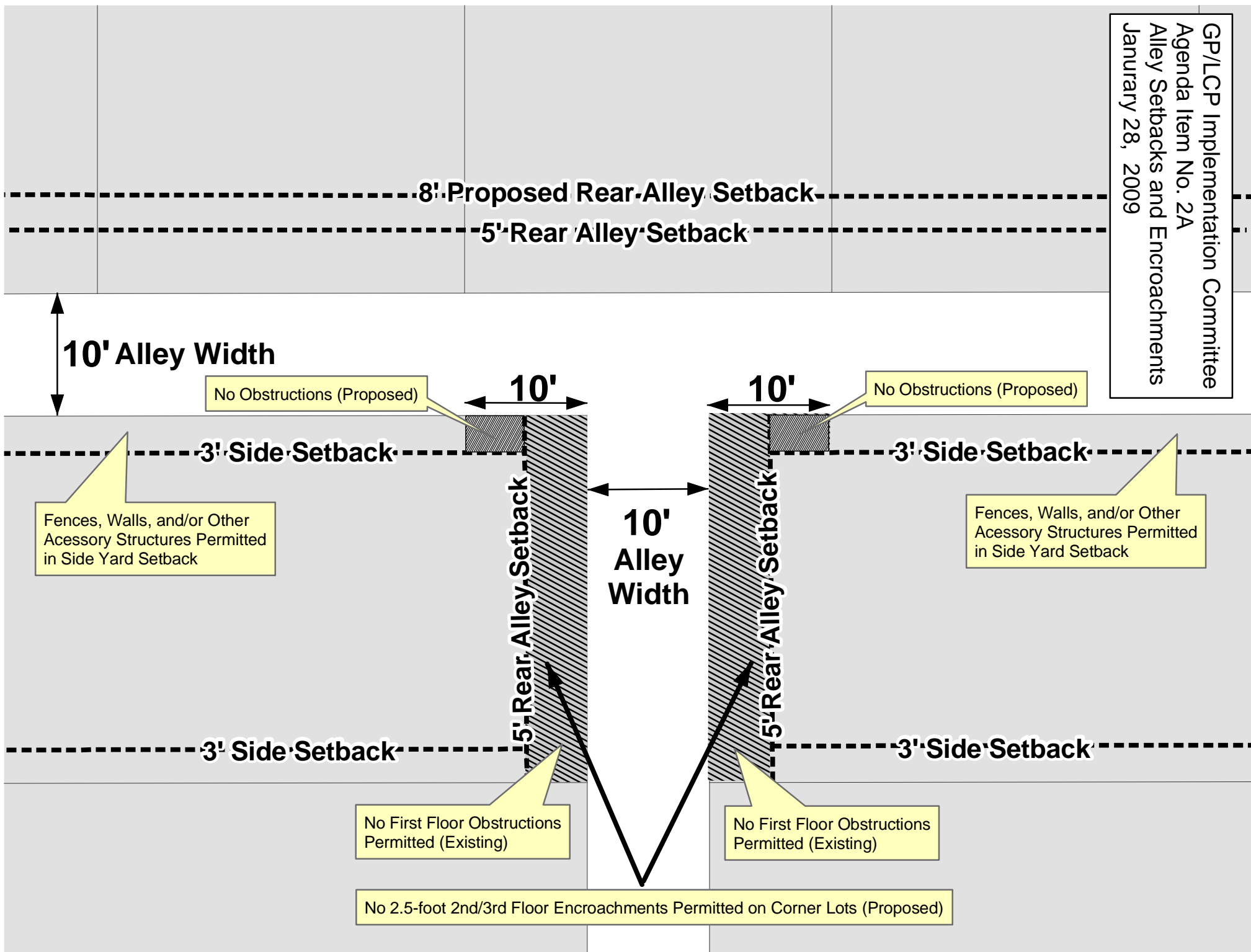
Draft Zoning Code Review

Agenda Item 2A

Alley Setbacks and Encroachments

It has become evident that several existing alley related regulations should be changed or considered for change to improve vehicular circulation and access to garages. The table below includes a short explanation of the current regulation, a proposed change and a short explanation of the resulting benefit. These changes have been discussed with the Public Works and General Services Departments who are in favor the proposed changes. **See the exhibit on the following page.**

Existing Regulation	Proposed Change	Benefit
Second and Third floors permitted to encroach 2.5 feet into 5-foot alley setback on lots with a depth of 85 feet or less.	Second and Third floors permitted to encroach 2.5 feet into 5-foot alley setback, except for corner lots at the intersection of two 10-foot alleys.	Increased turning area for large vehicles (e.g. garbage trucks, delivery vehicles, moving vans, etc.)
Side yard structures when side yard adjacent to alley are permitted in accordance with the standard regulations for exceptions to setbacks - Fences/walls/accessory structures 6 feet in height and less typically permitted.	At intersections of two 10-foot alleys, require that (in addition to the 5-foot alley setback remaining clear of obstructions) an additional 5-feet of the side yard adjacent to the alley remain clear of all obstructions.	Increased turning area intersections for all vehicles.
5-foot rear alley setback. Must remain clear of all obstructions.	Require an 8-foot garage setback when access is across from a side yard adjacent to an alley	Increase the effective width of the alley and allow for easier access to garages making them more useable.
Required parking spaces are not permitted in alley setbacks however, parking is in rear/alley setbacks and yards is permitted.	Staff recommends the Committee consider prohibiting parking in these areas. This may be best taken as a separate item on a future agenda.	Increased maneuverability and access to garages/parking.



Agenda Item 2B

Residential Related Regulations

Following are those Chapters that relate to residential development. Staff has met with the advisory group and the underlined/strikeouts reflect proposed changes made at those meetings and changes made at previous committee meetings.

20.30.030 – Fences, Hedges, and Walls

This Section provides standards for the provision of fences, hedges, and walls.

- A. Maximum height allowed.** Maximum heights of fences, hedges, and walls are shown in Table 3-1.

**TABLE 3-1
MAXIMUM HEIGHT OF FENCES, HEDGES, AND WALLS**

Location	Maximum Height
Front setback areas.	42 inches. See Subsection B, below.
Rear and interior side setback areas.	6 ft. in residential and commercial zoning districts. 8 ft. in industrial zoning districts adjacent to residential uses.
Rear setback area abutting or adjacent to the waterfront of Newport Bay, the shoreline of the Pacific Ocean, the Old Channel of the Santa River (the Oxbow Loop), or the channels in West Newport.	42 inches.
At intersections of streets, alleys and driveways within traffic sight areas.	See Section 20.30.110 (Traffic Safety Visibility Area).

B. Special area regulations.

- 1. Balboa Peninsula, Balboa Island, Corona del Mar, and West Newport.** In front setback areas in Balboa Peninsula, Balboa Island, Corona del Mar, and West Newport fences and walls shall be allowed to extend to a height of 5 feet, provided that any portion of the fence or wall above 2 feet shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least 40 percent of the portion of the fence or wall above 2 feet is open.
- 2. East Bay Front on Little Balboa Island, and North Bay Front and South Bay Front on Balboa Island.** In front setback areas adjacent to East Bay Front on Little Balboa Island, and North Bay Front and South Bay Front on Balboa Island, fences and walls shall be allowed to extend to a height of 5 feet, provided that any portion of the fence or wall above 2 feet shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least 40 percent of the portion of the fence or wall above 2 feet is open.

C. Exceptions to maximum height.

- 1. Grade differential.** Where the existing grade of a lot adjacent to the front setback area is more than 24 inches above the adjacent sidewalk (or curb elevation where no sidewalk exists), a maximum 24-inch high retaining wall shall

be allowed to be located at the front property line. Additional retaining walls shall be allowed to a maximum height of 36 inches each provided they are set back a minimum distance of 24 inches from the inward face of the previous retaining wall. Additional retaining walls shall be subject to the same limitation. A maximum 42-inch fence shall be allowed atop the upper most retaining wall for safety purposes, provided the fence is constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least 40 percent of the fence is open.

2. Decorative fence/wall details and lights. [New]

- a. Finials, light fixtures, pilaster caps, pots, and similar decorative items may be placed on fence or wall vertical support elements (e.g., pilasters, pillars, posts, etc.) provided they [are secure and](#) do not extend more than 12 inches above the maximum allowed height.
- b. The number of decorative items (e.g., finials, pilaster caps, pots, and similar items) and light fixtures shall be limited to not more than one item or fixture for every 6 lineal feet of fence or wall.

3. Fencing for pools and spas. [New]

- a. Swimming pools, spas, and other similar features shall be fenced in compliance with Municipal Code Title 15.
- b. Required fencing and guardrails for ponds, spas, and swimming pools in the rear setback areas of lots with 42-inch height limitations may be allowed to exceed the height limit up to the minimum required by Municipal Code Title 15 in compliance with the following standards:
 - (1) Fences shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least 40 percent of the fence or wall is open; and
 - (2) Fence height shall be limited to the minimum required by Municipal Code Title 15.

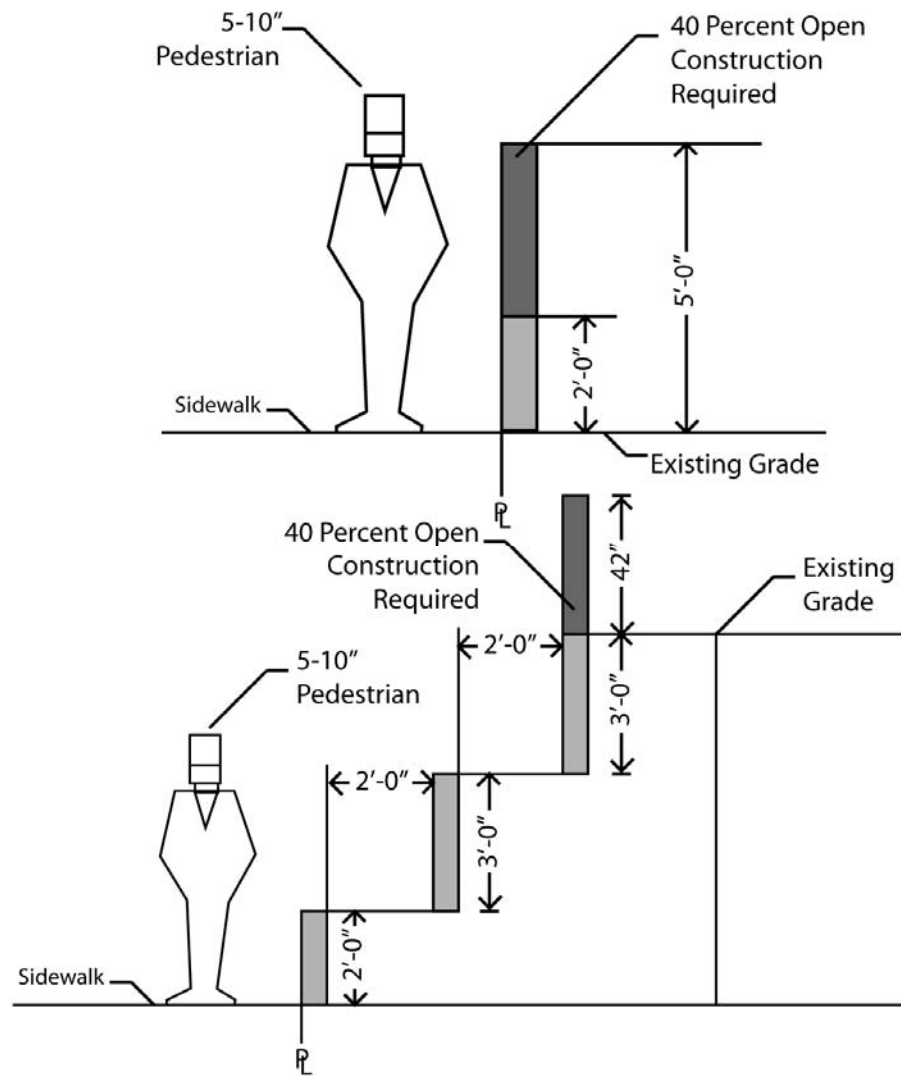
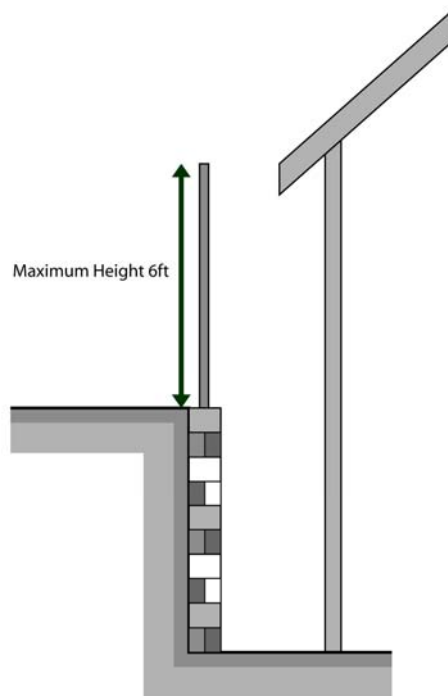


Figure 3-1
Grade Differential at Front Property Line

D. Measurement of fence or wall height. [New]

1. The height of a fence, hedge, or wall shall be measured from the lowest existing grade at the location where the fence, hedge, or wall is located.
2. Where a fence or wall is constructed on top of a retaining wall the height of the fence or wall shall be measured from the side of the retaining wall with the highest elevation. See Figure 3-2



**Figure 3-2
Fence Height**

- E. Prohibited fence materials. [New]** Barbed wire, electrical fences, razor wire, and other similar materials shall not be allowed in a residential zoning districtss.

20.30.040 – Grade Establishment [New]

This Section provides regulations for establishing the slope and grade of a lot for the purpose of identifying the surface from which to measure structure height to be used in conjunction with the provisions of Section 20.30.050 (Height Limits and Exceptions).

A. Establishment of slope. In order to determine which of the two methods to use to establish the grade of the lot from which to measure structure height as provided in Subsection B, below, it is first necessary to determine the slope of the lot as follows:

1. The slope of a lot shall be determined using a 4-sided polygon that most closely approximates the actual footprint of the proposed structure. The area of the 4-sided polygon shall not be smaller than the footprint of the proposed structure and shall be located entirely within the buildable area of the lot; (See Figure 3-3)

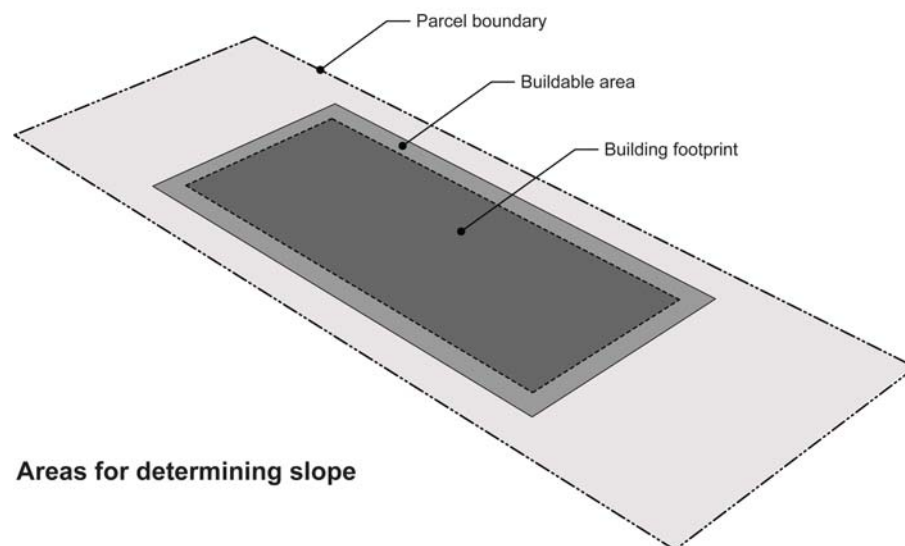


Figure 3-3
Area for Determining Slope

2. The slope of the polygon shall be determined using the highest and lowest elevation at any of the 4 corners of the polygon and the distance between the respective corners;
 3. If the location of the polygon selected by the applicant is not clearly representative of the lot's topography or representative of the prevailing slopes on adjoining lots because of retaining structures or previous excavation/fill, the Director shall establish the appropriate area to be used to determine the slope of the lot.
- B. Establishment of grade.** The grade of a lot shall be established by one of the following methods unless the Director establishes the grade in compliance with Subsection C (Establishment of grade by Director), below.

1. **Subdivisions.** If the City approves or has approved a grading plan in conjunction with an approved subdivision, the established grade shall be the finished grade as shown on the grading plan or Final Subdivision Map.
2. **5 percent or less slope.** On lots where the slope of the 4-sided polygon is 5 percent or less, the grade of the surface from which structure height is measured shall be a plane established using the average of the elevations at each corner of the 4-sided polygon. Example: $A + B + C + D = X$; $X/4 =$ Established grade elevation from which to measure structure height.
3. **More than 5 percent slope.**
 - a. On lots where the slope of the 4-sided polygon is greater than 5 percent, the established grade from which structure height is measured shall be a plane established by determining the elevation of the lot at 5 evenly spaced points along each of the 2 side property lines and connecting each of the points along a side property line with the corresponding point on the opposite side property line.
 - b. The 5 evenly spaced points along each side property line shall be located so that one point is located at the intersection of the front setback line with the side property line and another point is located at the intersection of the rear setback line with the side property line. The other 3 points along the side property line shall be located so that all 5 points are equidistant from each other. (See Figure 3-4)

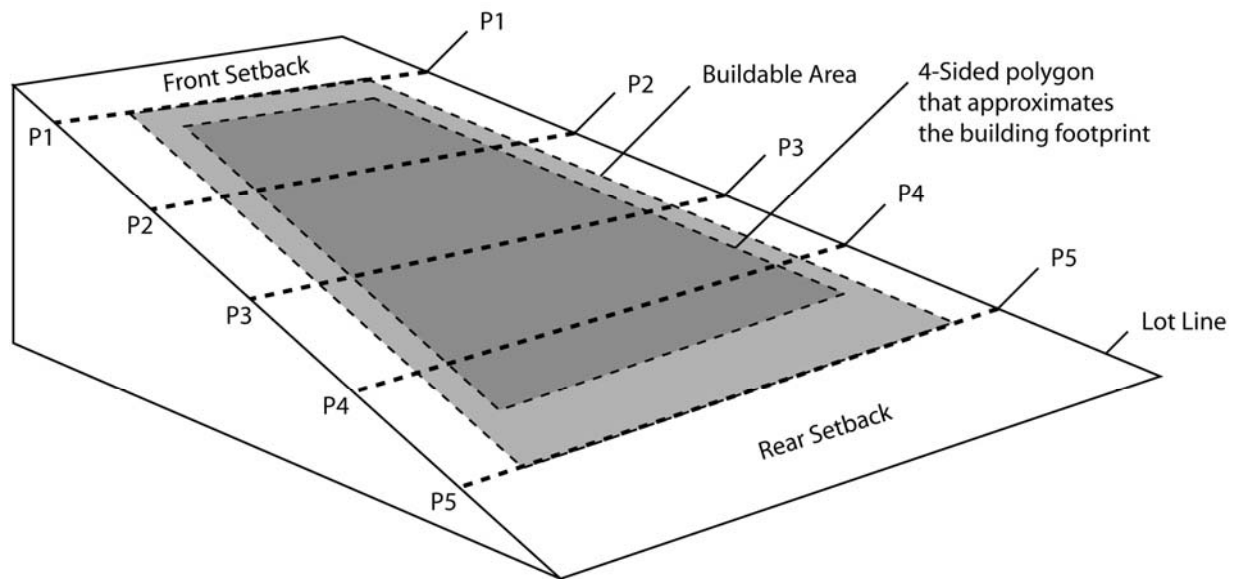


Figure 3-4
Slope Greater than 5%

- b. On lots that slope an average of 20 percent or greater, or on irregularly shaped or sloping lots, the Director may require that additional points of elevation be provided.

- C. Establishment of grade by Director.** If the Director finds that the existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot, the Director ~~shall~~ may establish the grade that is reasonable and comparable with the grades of adjoining lots and that will not be detrimental or injurious to property and improvements on adjoining lots.

20.30.050 – Height Limits and Exceptions [Revised]

This section establishes regulations for determining compliance with the maximum allowable height limits established for each zoning district by Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards).

A. Height of structures and measurement.

1. **Structure height established.** Structures shall not exceed the maximum allowable height for the zoning district in which the structure is located ~~in compliance with Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards)~~, except as provided in Subsection B (Increase in height limit), or Subsection C (Exceptions to height limits and setback planes), below.
2. **Height measurement.** Height shall be measured as the vertical distance from the established grade of the pad to the highest part of the structure. The established grade of the pad shall be established by one of the methods identified in Section 20.30.040 (Grade Establishment).
3. **Flood hazard areas.**
 - a. **Finished first floor elevation.** The minimum required finished first floor elevation for interior living areas of all new structures within flood hazard areas established by the Flood Insurance Rate Maps recognized by the Building Department as part of flood safety requirements and maps adopted by the Council shall be at least 8.67 feet above (NAVD 88) consistent with the Public Works Department standard for bulkhead elevation.
 - b. **Height measurement.** The height of a principal structure shall be measured from the elevation of the finished first floor, including habitable space over a garage or other nonhabitable space.
 - c. **Accessory structures.** The height of accessory structures may be measured from either the existing grade of the lot or the elevation established by the Flood Rate Maps.
4. **Setback plane in R-1 and R-2 zoning districts.** Height limits in the R-1 and R-2 zoning districts shall be regulated by a setback plane in compliance with the procedure below.
 - a. **Setback plane established.** A setback plane is established by projecting a vertical line at any point along a required setback line to a point the allowed height for a flat roof and beginning at that point projecting a 45 degree angle extending toward the interior of the parcel to a point where it intersects a plane equal to the maximum height for the zoning district. (See Figure 3-X, (Setback and Height Planes), below.
 - b. **Lots 40 feet wide or less, ~~than 40 feet in width~~.** The 45 degree angle side setback area plane shall will not apply to structures on lots 40 feet wide or less than 40 feet in width. On those parcels only the front and rear setback plane shall will apply.
5. **Structures on Ocean Boulevard.** New structures and additions/changes to existing structures on the bluff side of Ocean Boulevard in Corona del Mar shall

not be constructed to a height greater than the elevation of the adjacent curb. The top of curb height limit shall be established by a plane created by the extension of the top of curb line across each lot.

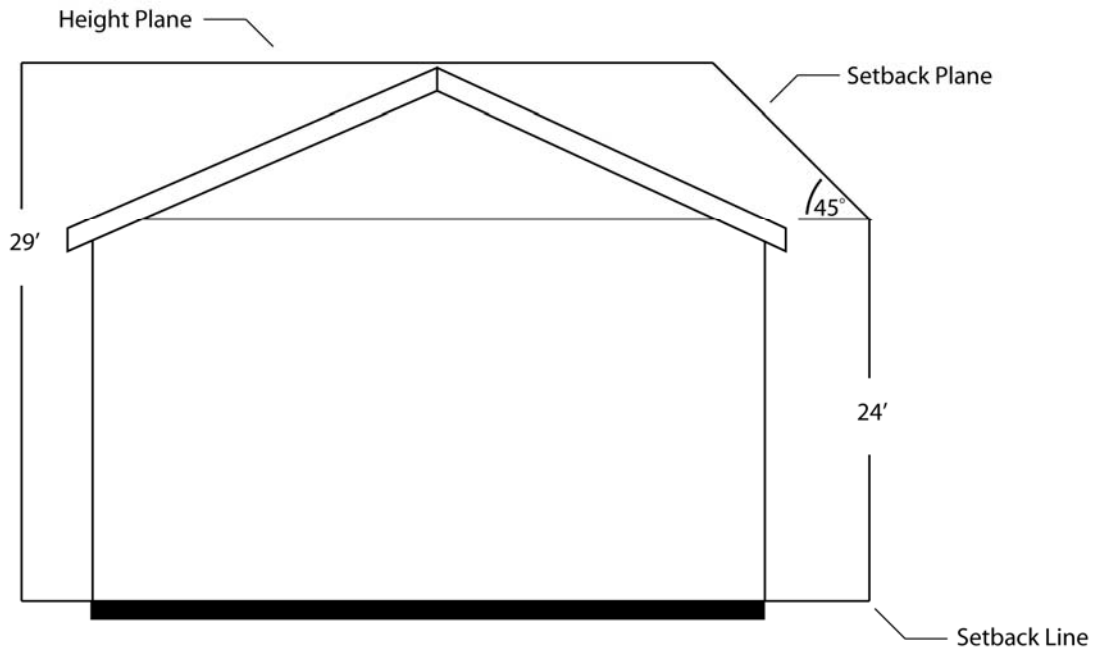


Figure 3-5
Setback and Height Planes

B. Increase in height limit.

1. **Procedure.** The base height limits established in Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards) may be increased within specified areas with the adoption of a planned community district, adoption of a specific plan, or approval of a Planned Development Permit, or Site Development Review. The maximum height limit is not guaranteed by right and shall require approval of a discretionary action when all applicable findings are met in compliance with Subparagraph 3, (Required findings), below.
2. **Height limit areas.** Except for the residential zoning districts, the location of the height limit areas are indicated on the "Height Limit Areas Map" (See Part 8, Figure H-1), which is incorporated and made a part of this Zoning Code. The designations of the height limit areas shall be as follows;
 - a. **R-1 and R-2 zoning districts height limit area.** In this height limit area the base height limit for structures with flat roofs is 24 feet and the base height limit for structures with sloped roofs is 29 feet. The height of a structure may be increased up to a maximum of 28 feet with a flat roof or 33 feet with a sloped roof through the approval of a discretionary application as provided above. This height limit applies in all R-1 and R-2 zoning districts.

- b. **RM zoning district height limit area.** In this height limit area the base height limit for structures with flat roofs is 28 feet and the base height limit for structures with sloped roofs is 33 feet. The height of a structure may be increased up to a maximum of 32 feet with a flat roof or 37 feet with a sloped roof through the approval of a discretionary application as provided above. This height limit applies in all RM zoning districts.
- c. **Nonresidential shoreline height limit area.** In the nonresidential shoreline height limit area the base height limit for structures with flat roofs is 26 feet and the base height limit for structures with sloped roofs is 31 feet. The height of a structure may be increased up to a maximum of 35 feet with a flat roof or 40 feet with a sloped roof through the approval of a discretionary application as provided above. The shoreline height limit shall apply to all nonresidential zoning districts, [including mixed use zoning districts](#), within its boundaries.
- d. **Nonresidential, nonshoreline height limit area.** In this height limit area the base height limit for structures with flat roofs is 32 feet and the base height limit for structures with sloped roofs is 37 feet. The height of a structure may be increased up to a maximum of 50 feet with a flat roof or 55 feet with a sloped roof through the approval of a discretionary application as provided above. This height limit shall apply to all nonresidential, nonshoreline zoning districts, [including mixed use zoning districts](#), within its boundaries.
- e. **[High Rise Height Area.](#)** [In this height limit area, the maximum height limit shall be 375 feet and no further increase to the maximum allowed height is available. This height limit is applicable to all nonresidential zoning districts within its boundaries as indicated on the Height Limit Areas Map \(See Part 8, Figure H-1\).](#)

3. Required findings. The review authority may adopt a planned community district, adopt a specific plan, or approve a Planned Development Permit, or Site Development Review to allow an increase in the height of a structure above the base height only after first making all of the following findings in addition to the findings required for the discretionary permit application:

- a. The project applicant is providing additional project amenities beyond those that are otherwise required [including the following](#):
 - (1) Additional landscaped open space;
 - (2) Increased setback and open areas;
 - (3) Additional or improved coastal access beyond that required;
 - (4) Enhancement and protection of public views; and
 - (5) Provision of public parking for coastal access.
- b. The architectural design of the project provides visual interest through the use of light and shadow, recessed planes, vertical elements, and varied roof planes;
- c. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed structure(s) and existing adjacent developments or public spaces. Where appropriate, the proposed structure(s) provide a gradual transition to taller or shorter structures on abutting properties; and

- d. The structure will have no more floor area than could have been achieved without the approval of the height increase.

C. Exceptions to Height Limits and Setback Planes

1. **Boat cranes.** Boat cranes used in conjunction with an approved marine-oriented nonresidential use may be allowed to exceed the maximum height limit up to a maximum operating height of 70 feet, subject to the approval of a Minor Use Permit.
2. **Chimneys and vents.** Chimneys for interior fireplaces and roof-mounted vents shall be allowed to exceed height limits to the minimum extent required by Municipal Code Title 15 (Building and Construction). ~~Chimneys shall be allowed an additional 12 inches in height to provide a spark arrestor or a decorative architectural screen. Chimneys including a spark arrestor or decorative architectural screen shall be no larger than 2 feet in width and 4 feet in length. Chimneys for exterior fireplaces shall conform to the maximum height limit for the zoning district.~~
3. **Dormers, shed.** [New] Shed-type Ddormers may be allowed to exceed the maximum height provided that:
 - a. The total width of the dormer that exceeds the height limit (setback plane) shall not be greater than ~~50-35~~ percent of the length of the side of the structure where the dormer is located; ~~and~~
 - b. The roof pitch of the dormer shall not be less than 2:12; and
 - ~~b.c.~~ The dormer shall not extend beyond a setback plane more than 2 feet from its intersection with the setback plane.
4. **Elevator shafts, enclosed stairwells.** Elevator shafts and enclosed stairwell housings may exceed the allowed height limit by the minimum height required by Municipal Code Title 15 (Building and Construction) provided they do not exceed 30 square feet in area, unless a larger elevator is required by Municipal Code Title 15 and/or Fire Department. In these instances, the area of the elevator or stair housing shall not exceed the minimum size required by Municipal Code Title 15 and/or Fire Department. Elevator shafts and enclosed stairwell housings that exceed 30 square feet in area shall have sloped roofs with a minimum 3/12 pitch.
5. **Fences, hedges, and walls.** Section 20.30.030 (Fences, hedges, and walls) sets forth exceptions to height limits for these structures.
6. **Flag poles.**
 - a. Ground-mounted flag poles shall be allowed in residential zoning districts to a maximum height of 28 feet and in nonresidential zoning districts to a maximum height of 35 feet.
 - b. Flag poles mounted on tops of buildings located in nonresidential zoning districts shall be allowed to exceed the maximum height limit by up to 20 feet. [New]

7. **Landmark buildings.** An alteration or addition to a Landmark Building shall be exempt from height limits, provided that structural alterations or additions that exceed the height of the existing structure shall require approval of a Site Development Review in compliance with Section 20.66.070 and shall not exceed a maximum of 55 feet in height. The Site Development Review may be approved only if all of the following findings are first made in addition to those findings identified on Section 20.66.070:
 - a. The portion of the structural alteration or addition that exceeds the height of the existing structure does not significantly impact views from public rights-of-way.
 - b. The portion of the structural alteration or addition that exceeds the height of the existing structure will not be used in a manner that increases the intensity of the use of the Landmark Building.
 - c. The allowed height of the Landmark Building will not be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of the Landmark Building.
8. **Light standards.** Light standards may be allowed to exceed maximum height limits, subject to the approval of a Site Development Review in compliance with Section 20.66.070. All light fixtures and standards shall comply with the requirements of Section 20.30.060 (Outdoor Lighting).
9. **Mechanical and solar equipment.**
 - a. **Nonresidential zoning districts.** In nonresidential zoning districts, roof-mounted mechanical and solar equipment, totaling not more than 30 percent of the total roof area, including required screening devices, shall be allowed to exceed the maximum height limit by up to 5 feet.
 - b. **Residential zoning districts.** In residential zoning districts, roof-mounted solar equipment, totaling not more than 30 percent of the total roof area, shall be allowed to exceed the maximum height limit by up to 3 feet on a flat roof and not above the ridge line on a sloped roof unless no other alternative is available as determined by the Director.
10. **Assembly and meeting facilities.** Structures used as places of worship may be allowed to exceed the height limit subject to the approval of a Site Development Review in compliance with Section 20.66.070. Where more than one structure exists or is proposed for the site, only the principal structure shall be eligible for approval to exceed the maximum height limit.
11. **Skylights and roof windows.** ~~When mounted on a flat roof, s~~Skylights or roof windows shall be allowed to exceed the maximum height limit by up to 6 inches on conforming roofs.

D. Airport area height limits.

1. **Development applications.** Applicants for projects that require a notice of construction or alteration by Federal Aviation Administration (FAA) Regulations Part 77 shall submit a copy of the FAA application to the Airport Land Use Commission (ALUC) and provide the City with FAA and ALUC responses.

2. **ALUC review.** Development projects that include structures ~~greater~~higher than 200 feet above existing grade shall be submitted to the Airport Land Use Commission (ALUC) for review. ALUC review comments shall be submitted to the City within 60 calendar days from the date of referral of the application to the ALUC and the determination shall be considered by the City before action on the project. If the ALUC fails to make a determination within the 60-day period, the proposed project shall be deemed consistent with the Airport Environs Land Use Plan (AELUP).

In addition, projects that exceed a height of 200 feet shall file Form 7460-1 with the Federal Aviation Administration (FAA).

20.30.090 – Setback Regulations and Exceptions [Revised]

This Section establishes standards to ensure the provision of open areas around structures for: visibility and traffic safety; access to and around structures; access to natural light and ventilation; ~~separation of incompatible land uses~~; space for privacy, landscaping, and recreation; protection of natural resources; and safety from fire and geologic hazards.

A. Setback requirements.

1. Structures.

a. **Principal structures.** Principal structures shall conform with the setback requirements established for:

- (1) Each zoning district in Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards) of this Code;
- (2) Any specific uses identified in Part 4 (Standards for Specific Land Uses) of this Zoning Code;
- ~~(3) Any special setback areas established in Chapters 20.38 (Bluff, Canyon, and Shoreline Protection Standards in the Coastal Zone) and 20.40 (Bluff and Canyon Protection Standards Outside the Coastal Zone); and~~
- (3) Any special setback areas established in Municipal Code Title 9 and Title 15.

b. **Access to dwellings.** On residential lots wider than 30 feet ~~wider or more, if the primary entrance to a single- or two-unit dwelling faces a side setback area the entry door shall be set back a minimum of 5 feet from the side property line and a 3-foot wide unobstructed walkway shall be a 4 foot side setback area shall be maintained- provided~~ up to a minimum height of 8 feet ~~above existing grade~~ between the primary entrance ~~of a single- or two-unit dwelling~~ and the public street or alley. ~~Within this area, a 3-foot wide unobstructed walkway shall be provided. The walkway shall be paved and the only above-grade encroachments allowed in this area shall be steps necessary for use of a first floor entrance. The requirements of this Section are not intended to affect the buildable area of a lot.~~

c. **Access to side setback area.** On residential lots, ~~R~~ regardless of the setback area encroachments allowed by this Subsection, a minimum 36-inch wide passageway shall be maintained within at least one side setback area adjacent to the principal structure in compliance with the following:

- (1) The passageway shall be free of any encroachments or obstructions from ground level to a height of 8 feet, including mechanical equipment, and other items attached to, or detached from, the principal structure;

- (2) Fences and walls located immediately adjacent to the property line may encroach up to 6 inches. No reduction or modification to this requirement shall be allowed; and
- (3) The opposite side setback area may have encroachments allowed by this Subsection.

d. Accessory structures. All accessory structures shall comply with the setback requirements established for:

- (1) Accessory Structures in Section 20.30.090 and any allowed encroachments provided in this Section; and
- (2) Any special setback areas established in Municipal Code Title 9 and Title 15.

2. Setback areas to be open. Each required setback area shall be open and unobstructed from the ground upward, except as provided in this Section.

B. Location and measurement of setbacks. Setbacks shall be located and measured as follows:

1. General.

- a. Measure at right angles.** The distance/depth of a setback area (i.e., front, side, or rear) shall be measured at right angles from the nearest property line establishing a setback area line parallel to that property line.
- b. Future street right-of-way.** Whenever a future street right-of-way line is officially established, required setback areas shall be measured at right angles from the established future right-of-way line(s).

2. Front setback area.

- a. General.** The front setback area shall extend across the entire width of the lot frontage.
- b. Corner lots.** The front setback area for a corner lot shall be measured from the shortest property line adjoining the street ~~to which the property is addressed~~.

3. Side setback area. The side setback area shall be established by a line parallel with the side property line and extending between the front and rear setback areas.

4. Street side setback area. The side setback area on the street side of a corner lot shall be established by a line parallel with the side property line adjoining the street and extending between the front and rear setback areas.

5. Rear setback area.

- a. General.** The rear setback area shall extend across the entire width of the rear of the lot.

- b. Irregular shaped lots.** Where the side lot lines converge to a point at the rear of the lot, a line 10 feet long within the lot, parallel to and at a maximum distance from the front lot line, shall be deemed to be the rear lot line for the purpose of determining the depth of the required rear setback area. See Figure 3-X. (Rear Setback Areas on Irregularly-shaped Lots), below

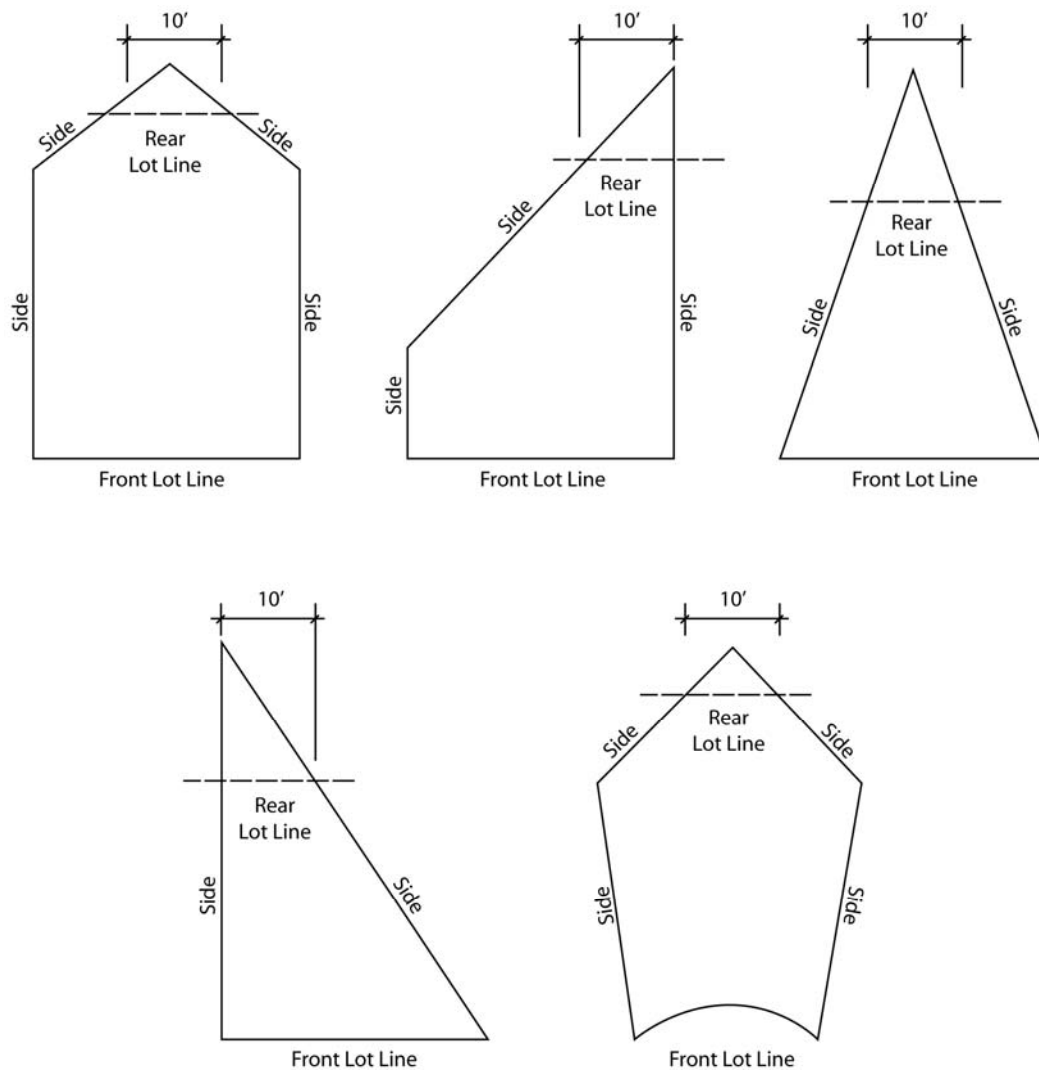


Figure 3-6
Rear Setback Areas on Irregularly-Shaped Lots

~~6. Bluff and canyon setback area.~~ The bluff and canyon setback area shall be established in compliance with Chapters 20.38 (Bluff, Canyon, and Shoreline Protection Standards in the Coastal Zone) and 20.40 (Bluff and Canyon Protection Standards Outside the Coastal Zone). The bluff and canyon setback area ~~shall/may~~ be used in determining the maximum potential building envelope for the lot.

- C. Alternative setback area location.** In cases where the orientation of an existing lot and the application of the setback area is are not consistent with the character or general orientation of other lots in the vicinity, the Director may redefine the location of the front, side, and rear setback areas to be consistent with surrounding properties. This The reorientation of setback areas is not applicable to bluff and canyon setback lines/areas.
- D. Allowed encroachments into setback areas.** Encroachments into required setback areas are allowed in compliance with the standards in this Subsection, except as provided Paragraph 1, below.
- 1. Exceptions.**

- a. **Waterfront areas.** Allowed encroachments into required setback areas abutting or adjacent to the waterfront of Newport Bay, the shoreline of the Pacific Ocean, the Old Channel of the Santa River (the Oxbow Loop), or the channels in West Newport shall not exceed a height of 42 inches above the existing grade.
- b. **Bluff and canyon areas.** The encroachments allowed by this Subsection do not apply to bluff or canyon setback areas. ~~For allowed encroachments into a Bluff or Canyon Setback Areas refer to Chapters 20.38 (Bluff, Canyon, and Shoreline Protection Standards in the Coastal Zone) and 20.40 (Bluff and Canyon Protection Standards Outside the Coastal Zone).~~

2. Accessory structures

- a. Accessory structures, including housings for mechanical equipment, not more than 6 feet in height and totaling no more than 150 square feet per structure, may be located within a required side or rear setback area other than those abutting an alley.
- b. Arbors, trellises, and similar garden structures may be allowed to encroach into required front, side, and rear setback areas subject to the following limits:
 - (1) The maximum footprint of the structure shall not exceed 16 square feet; and
 - (2) The maximum height of the structure shall not exceed 9 feet.
- c. Display areas for new motor vehicles associated with an allowed vehicle sales facility may encroach into a required front or street side setback area up to a maximum of 2 feet from the street adjacent property line.
- ed. Fences, hedges, and walls may be established within required setback areas in compliance with the requirements of Section 20.30.030 (Fences, Hedges, and Walls).
- ed. Solar devices, hot tubs, and other similar equipment that are placed directly upon the existing grade and are less than 36 inches in height may be located within a required side or rear setback area other than those abutting an alley.
- fe. Decks, landings, patios, platforms, porches, steps, and terraces, and similar structures not more than 18 inches **[new]** in height measured from the existing grade may be located within a required side or rear setback area other than those abutting an alley.

3. Architectural features.

- a. Roof overhangs, brackets, cornices, and eaves may encroach up to 30 inches into ~~any~~ required front, side, or rear setback area, including required setbacks above 24 feet, provided that no architectural feature shall project closer than 24 inches from a side property line and a minimum vertical clearance above grade of at least 8 feet is maintained

- b. Decorative architectural features (e.g., belt courses, ornamental moldings, pilasters, and similar features) may encroach up to 6 inches into a required setback area.

4. Awnings and canopies. Awnings and canopies may encroach into required setback areas up to a maximum of 5 feet subject to the following limits.

- a. Residential districts.

Front: One half the depth of the required front setback area
Side: 0 feet
Rear: 2½ feet
Vertical Clearance: 6½ feet above grade

- b. Nonresidential districts, including mixed use districts

Front: One half the depth of the required front setback area
Side: 2 feet
Rear: One half the depth of the required rear setback area
Vertical Clearance: 8 feet above grade.

5. Balconies abutting East Ocean Front and West Ocean Front.

- a. Balconies may encroach up to a maximum of 36 inches into a required front setback area along East Ocean Front and West Ocean Front. Balcony railings shall not exceed a maximum height of 42 inches and shall be constructed of either transparent material (except for supports) or opaque material (e.g., decorative grillwork, wrought iron, latticework, or similar open materials) so that at least 40 percent of the railing is open.
- b. Balconies shall be cantilevered so that no underlying support is necessary. Roofs over balconies shall not be allowed to encroach into required front setback areas except as provided in Section 20.30.090.D.3 (Architectural features), above.

6. Bay windows and greenhouse windows. Bay windows and greenhouse windows shall be allowed to encroach into required setback areas subject to the following limits:

- a. No more than 2 bay windows or greenhouse windows shall be allowed to encroach into any one setback area.
- b. Bay windows and greenhouse windows shall not to exceed 8 feet in width or 10 feet in height within the area of encroachment.
- c. Bay windows and greenhouse windows shall be cantilevered and shall be designed to preclude use as a door or entry.
- d. The exterior bottom surface of a bay window or greenhouse window shall be elevated a minimum of 18 inches above the adjacent finished interior floor surface at the required building setback line.
- e. Encroachments into required setback areas shall be limited as follows:

**TABLE 3-3
ENCROACHMENT**

Standard	Allowed Encroachment	Additional Regulations
Front setback (4 feet to less than 10 ft.):	16 in.	
Front setback (10 ft. or more):	2 ft.	
Side setback:	2 ft.	Limited to first floor only. <u>The encroachment shall be at least 24 inches from the side property line.</u>
Rear setback:	2 ft.	Not allowed when the rear property line abuts an alley.
Distance Between Detached Structures:	2 ft.	

7. Fireplaces, barbeques, and chimneys - attached [New]

- a. **Front and rear setback area.** Fireplaces, barbeques, and chimneys attached to the principal structure that are less than 9 feet in width may encroach up to 2 feet into a required front or rear setback area that is 10 feet or greater in depth.
- b. **Side setback area.** Fireplaces and chimneys attached to the principal structure that are less than 9 feet in width may encroach up to 30 inches into a required side setback area provided that the encroachment shall be at least 24 inches from the side property line.

8. Fireplaces and barbeques - freestanding. [New]

- a. **Front setback area.** Freestanding fireplaces (gas only) and barbeques with a maximum height of 42 inches (not including the barbeque hood) shall be allowed to encroach into the required front setback area provided the total length of the barbeque and counter does not exceed 6 feet.
- b. **Side and rear setback area.** Freestanding fireplaces (gas only) and barbeques with a maximum height of 6 feet shall be allowed to encroach into the required side or rear setback area provided a minimum 36-inch clear path of travel is maintained adjacent to any habitable structures.

9. Garages and carports for duplexes. Where 3 parking spaces are located in garages or carports across the rear of a lot that is less than 30 feet 10 inches wide, one garage/carport wall or support may encroach into the ~~required~~ side setback area subject to the following:

- a. **Distance to property line.** The distance from the garage wall or carport support ~~element~~ to the closest nearest side property line shall be not less than 26 inches plus the amount that the width of the lot exceeds 30 feet.

The other side setback area shall have a clear passageway a minimum of 36 inches wide, clear of any obstructions; and

- b. **Width of garage/carport.** The width of each garage/carport shall not be larger-greater than the minimum required by Section 20.52.070 (Parking Standards for Residential Uses).
10. **Foundations, footings, basement walls, and structural supports. [New]** Foundations, basement walls, and their structural supports (caissons) that are located completely below finished grade may encroach into a required setback area up to 12 inches, provided they are located at least 1224 inches from any property line.
11. **Light standards. [New]** In nonresidential zoning districts, light standards used in conjunction with the illumination of parking lots and walkways shall be allowed to encroach into a required setback area provided all of the requirements of Section 20.30.060 (Outdoor Lighting) are complied with.
12. **Protective Railing.** Protective railings around balconies and windows required by Municipal Code Title 15 may encroach up to 6 inches into a required setback area.
13. **Second stories abutting alleys.** In residential districts having alleys to the rear of the lot or development site, a second story encroachment may be allowed to encroach into the required setback area subject to the following conditions:
 - a. Encroachments shall not extend closer than 7.5 feet to the center of any alley;
 - b. Encroachments shall not extend closer than 2.5 feet to the rear property line;
 - c. That portion of the building that encroaches into the required rear setback area shall have a minimum ground clearance of 8 feet; and
 - d. No encroachment shall be allowed on lots having a depth exceeding 85 feet.
14. **Shoring.** Permanent or temporary shoring may encroach into a required setback area provided it is located completely below finish grade and at least 12 inches from any property line.
- ~~14.15. **Swimming pools.** Swimming pools may encroach into a side or rear setback area.~~

20.60.190 - Residential Development Standards

The development standards in this Section shall apply to all single-unit and two-unit residential dwellings in addition to the standards provided in Chapter 20.18 (Residential Zoning Districts). This Section does not apply to lots 25 feet wide or less in the R-2 zoning district and in Planned Community Zoning Districts.

E. Third floor limitations.

1. **Allowed floor area.** The maximum gross floor area of habitable space that may be located on a third floor or above 24 feet in height shall not be greater than ~~45 percent of the total buildable area of the subject property; either of the following:~~

a. 15 percent of the total buildable area for lots wider than 30 feet; or .

b. 20 percent of the total buildable area for lots 30 feet wide or less.

For example, on a 30-foot wide lot, if the total buildable area of a lot is 2,550 square feet , then the maximum square footage of habitable space that may be located on the third floor is 510 square feet (2,550 sq. ft. X 20% = 510 sq. ft.).

2. **Location of third floor structure.** Enclosed square footage located on the third floor or above 24 feet in height shall be set back a minimum of 15 feet from the front and rear setback lines and a minimum of 2 feet from each side setback line, including bay windows.

F. ~~Usable~~ Open space.

1. **R-1 and R-2 zoning districts.** Each dwelling shall provide the equivalent of 20 percent of the buildable area of the lot as ~~usable and accessible~~ open space. A minimum of 25 percent of the required open space (useable or unusable) shall be provided at the second floor level or below 24 feet in height.

- ~~2. **Qualified open space areas.** To qualify as usable required open space the space provided shall meet the following minimum requirements:~~

2. **Required usable open space.** A minimum of 50 percent of the required open space shall be usable and accessible. To qualify as usable open space the space provided shall meet the following minimum requirements:

a. Have a minimum ~~horizontal~~ dimension of at least 5 feet and a minimum vertical dimension of at least 7.5 feet;

b. Be located within the buildable area of the lot and accessible;

c. Be open to the outdoors on at least one side; ~~however a minimum of 50 percent of the required open space shall be open on at least 2 sides;~~

d. Be located no higher than the second floor or 24 feet in height; and

e. May include guard rails, structural supports, and similar elements.

3. **Other required open space.** The 50 percent of the open space that is not required to be useable and accessible shall meet the following requirements:

- a. Have a minimum dimension of at least 2 feet and a minimum vertical dimension of at least 6 feet;
- b. Be located within the buildable area of the lot;
- c. Be open to the outdoors on at least one side;
- d. Be located no higher than the second floor or 24 feet in height; and
- e. May include guard rails, structural supports, and similar elements.

Agenda Item 2C

Non-Conforming Structures (Draft Code Chapter 20.50)

Following are revised sections 20.50.020 and 20.50.040 of the draft zoning code for your review.

20.50.020 – Applicability

- A. Legally established uses and structures.** The provisions of this Chapter shall apply to all legally established uses and structures that became nonconforming due to reclassification, ordinance changes, or annexations.
- B. Exemptions.** A structure that was legally constructed prior to (insert date of code adoption) shall be exempt from the limitations identified in section 20.50.040G.1 unless, the structure is non-conforming as to setbacks.

20.50.040- Nonconforming Structures

Nonconforming structures may be maintained, altered, or added on to only in compliance with the provisions of this Section.

- A. Maintenance and repairs.** Routine maintenance and repairs may be made to nonconforming principal and accessory structures.
- B. Nonstructural alterations.** Changes to interior partitions or other nonstructural improvements may be made to nonconforming structures, except accessory structures.
- C. Structural alterations.** Structural elements, with the exception of foundations (see 20.50.040D), of nonconforming principal structures, may be modified, repaired, or replaced. Structural alteration of accessory structures is not permitted.
- D. Foundation Alterations.** Maintenance and repairs may be made to foundations of nonconforming of principal structures. Foundations of nonconforming principal structures may not be modified, retrofitted or replaced in conjunction with other alterations or additions permitted by this section. Should a foundation of nonconforming principal structure require modifications, retrofitting or replacement beyond routine repair or maintenance, the nonconforming structure shall be required to be brought into compliance with all applicable standards and regulations of this

Zoning Code. Foundation alterations of accessory structures is not permitted.

- E. Seismic retrofits.** Alterations to nonconforming structures due to seismic retrofitting requirements are allowed in compliance with Chapter 15.07 (Earthquake Hazard Reduction in Existing Buildings) of the Municipal Code.
- F. Reasonable accommodation.** Improvements to a nonconforming structure that are necessary to comply with an approved reasonable accommodation in compliance with Section 20.66.040 (Reasonable Accommodations) shall be allowed.
- G. Additions.** Nonconforming structures may be expanded and the existing nonconforming structure shall not be required to be brought into compliance with the development standards of this Zoning Code subject to the following:

 - 1. Expansion is limited to a maximum of 50 percent of the gross floor area of the existing structure within a 10 year period
 - 2. The floor area of the addition, together with the floor area of the existing structure, does not exceed the allowed maximum floor area for the zoning district;
 - 3. The addition complies with all applicable development standards and use regulations of this Zoning Code ;
 - 4. Additional parking shall be provided in compliance with Section 20.50.060 (Nonconforming Parking),

Agenda Item 2D

Public View Protection (Draft Code Section 20.30.080)

Following is a revised draft Public View Protection section. The section has been substantially revised therefore, a clean version is being provided. Also attached are the visual resources polices from the General Plan.

20.30.80 Public View Protection [New]

This Section provides regulations to preserve significant visual resources (public views). It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deprive the property owner from the reasonable use of property.

- A. Applicability.** The provisions of this Section shall apply only to discretionary applications where a project has the potential to obstruct public views from public view points and corridors, as identified on General Plan Figure NR 3 (Coastal Views), to the Pacific Ocean, Newport Bay and harbor, offshore islands, the Old Channel of the Santa River (the Oxbow Loop), Newport Pier, Balboa Pier, designated landmark and historic structures, parks, coastal and inland bluffs, canyons, mountains, wetlands, and permanent passive open space.
- B. Initial evaluation.** Discretionary applications involving a project site adjacent to an identified public view point or corridor shall be reviewed to evaluate the development's potential to impact public views.
- C. Visual impact analysis.** Where a proposed development has the potential to obstruct a public view(s) from a identified public view point or corridor, as identified on General Plan Figure NR 3 (Coastal Views), a view impact analysis may be required by the Department. The view impact analysis shall be prepared at the project proponent's expense. The analysis shall include recommendations to minimize impacts to public views from the identified public view points and corridors while allowing the project to proceed while maintaining development rights.
- D. Project design and siting.** Projects subject to this section shall be designed and sited to minimize impacts to public views. This may be done by incorporating setbacks that, in conjunction with setbacks on adjacent properties, will form public view corridors or by clustering buildings, providing greater setbacks from adjacent development or other design features that minimize impacts.

- E. Landscape standards.** Landscape improvements shall be installed and maintained to ensure that landscape materials do not unnecessarily obstruct public views at maturity. Landscaping at the edges of roads from which there is an identified public view should be designed, planted and maintained to frame and accent public views.
- F. Other Development Features.** Freestanding signs, rooftop equipment, antennas and other project features shall be designed and sited to ensure that they minimize impacts.
- G. View protection easement.** The review authority may require applicants to provide public view protection easements to protect public views.

General Plan Goal and Policies

These and Figure NR3 can be found on page 10-36 of the Natural Resources Element.

Goal-NR 20

Preservation of significant visual resources.

Policies

NR 20.1 Enhancement of Significant Resources

Protect and, where feasible, enhance significant scenic and visual resources that include open space, mountains, canyons, ridges, ocean, and harbor from public vantage points, as shown in Figure NR3. *(Imp 2.1)*

NR 20.2 New Development Requirements

Require new development to restore and enhance the visual quality in visually degraded areas, where feasible, and provide view easements or corridors designed to protect public views or to restore public views in developed areas, where appropriate. *(Imp 20.3)*

NR 20.3 Public Views

Protect and enhance public view corridors from the following roadway segments (shown in Figure NR3), and other locations may be identified in the future:

- Avocado Avenue from San Joaquin Hills Road to Coast Highway
- Back Bay Drive

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- Balboa Island Bridge
- Bayside Drive from Coast Highway to Linda Island Drive
- Bayside Drive at Promontory Bay
- Coast Highway/Santa Ana River Bridge
- Coast Highway/Newport Boulevard Bridge and Interchange
- Coast Highway from Newport Boulevard to Marino Drive (Bayshores)
- Coast Highway/Newport Bay Bridge
- Coast Highway from Jamboree Road to Bayside Drive
- Coast Highway from Pelican Point Drive to city limits
- Eastbluff Drive from Jamboree Road to Backbay Drive
- Irvine Avenue from Santiago Drive to University Drive
- Jamboree Road from Eastbluff Drive/University Drive to Bayview Way
- Jamboree Road in the vicinity of the Big Canyon Park
- Jamboree Road from Coast Highway to Bayside Drive
- Lido Isle Bridge
- MacArthur Boulevard from San Joaquin Hills Road to Coast Highway
- Marguerite Avenue from San Joaquin Hills Road to Fifth Avenue
- Newport Boulevard from Hospital Road/Westminster Avenue to Via Lido
- Newport Center Drive from Newport Center Drive E/W to Farallon Drive/Granville Drive
- Newport Coast from Pelican Hill Road North to Coast Highway
- Ocean Boulevard
- Pelican Hills Road South
- San Joaquin Hills Road from Newport Ridge Drive to Spyglass Hill Road
- San Miguel Drive from San Joaquin Hills Road to MacArthur Boulevard
- State Route 73 from Bayview Way to the easterly City limit
- Superior Avenue from Hospital Road to Coast Highway
- University Drive from Irvine Avenue to the Santa Ana—Delhi Channel
- Vista Ridge Road from Ocean Heights to Altezza Drive (*Imp 2.1, 20.3*)

NR 20.4 Public View Corridor Landscaping

Design and site new development, including landscaping, on the edges of public view corridors, including those down public streets, to frame, accent, and minimize impacts to public views. (*Imp 2.1*)

NR 20.5 Public View Corridor Amenities

Provide public trails, recreation areas, and viewing areas adjacent to public view corridors, where feasible. (*Imp 2.1, 16.11, 23.2*)

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